13.04.00.00 - LIABILITY DETERMINATION PHASE

13.04.01.00 General

Liability determination is the process of analyzing the occupancy rights of the owner of utility facilities by a highway project versus the State's rights. Who has the prior or superior right in the area of the impacted facility is the basis for determining responsibility for payment of relocation costs. The burden of establishing prior rights rests with the Owner. The district is responsible for accumulating the data, providing a complete and accurate report, and for confirming and approving the liability. Until an approved liability is made, the district is not to provide any determination to the Owner.

13.04.01.01 Determining Superior Rights

The Owner is responsible to prepare, document, and submit a claim for their declared right of occupancy. If the Utility Coordinator's investigation confirms the Owner has rights prior and superior to those of the State, and Headquarters R/W or the authorized district person concurs, the Owner is paid for all or a portion of the relocation work.

Liability determination is based on who has the superior occupancy rights. The factors in the table entitled Liability Determination Factors on the following page must be taken into consideration.

13.04.01.02 Liability Calculation

Liability for the relocation cost is determined on the basis of who has the subservient right in the area of the existing facility that is impacted. If all of the impacted facility is within an area of a single type of occupancy right, the determination of who is liable for the cost, outside of a Master Agreement situation, is simply that of the subservient position being responsible. If the facility area of occupancy consists of more than one type of occupancy right, e.g., part within a utility easement and part under an Encroachment Permit, then a proration between Owner and State of the total cost must be calculated using one of the three methods shown in the table entitled Methods of Calculating Proration of Cost.

It is important to remember that only the impacted portion of the existing utility facility that lies within the State-owned or controlled project limits is counted or measured, as applicable, for use in the proration formula. The total to be prorated, however, includes the cost of relocated facilities both within and outside the right of way. This total cost must not include any betterment or other nonreimbursable items of cost.

13.04.02.00 Conventional Highway or Freeway

The only difference between the way liability is determined for conventional highway projects and freeway projects is the S&H Code sections that apply.

13.04.02.01 Conventional Highway Relocations

Liability for the cost of relocating facilities to provide for conventional highway construction is primarily based on occupancy rights. The Owner is generally obligated to provide positive locations, remove, relocate, etc., their facilities at their sole expense unless such facilities are in place pursuant to rights prior and superior to those of the State, except for the relocation of a facility for a temporary purpose (see Section 13.04.05.02) or a facility to be relocated pursuant to Water Code Section 7034 or 7035 (see Section 13.04.05.01 and .02).

If a route has been declared a freeway, which designation overlays an existing conventional State highway, the project is considered a conventional highway project unless both the following conditions are met.

LIABILITY DETERMINATION FACTORS (Section 13.04.01.02)	
Factor	**Discussion**
What is the legal basis, if any, under which the utility facility is occupying the property?	Property rights are the primary determinant of who has the superior right of occupancy and will be based on one of the following: 1. Fee Ownership 2. Easement (recorded or unrecorded) 3. Implied/Secondary Easement 4. Joint Use and/or Consent To Common Use Agreements 5. Prescriptive Right 6. Lease 7. License 8. Franchise 9. Encroachment Permit 10. Trespass Normally, Items 1 through 5 establish prior rights, and the State is probably liable for relocation costs, unless the documents involved contain clauses that reserved to the original grantor the right to order one or more relocations at the grantee's expense. Occupancy under Items 6 through 10 usually require that relocations be at the Owner's expense on conventional highways. Item 8 is addressed in S&H Code Section 680 for conventional highways. Item 9 is addressed in S&H Code Section 673. Item 7 is generally like a permit and can be canceled by the fee owner of the property, however, the state must be the fee owner of the property to exercise any contractual rights that were originally reserved by the grantors. Item 10 is generally treated as a highway encroachment permit.
Is there a Master Agreement between the Owner and State?	The State has entered into Master Agreements with many Owners. Each Agreement has different terms, even though they may appear identical. When the terms of a Master Agreement address any specific S&H Code section or right, the terms of the Agreement supersede the requirements of the applicable statute.
When was the route adopted by formal action of the CTC as a State Highway?	
When was the adopted route declared by formal action of the CTC to be a freeway or expressway?	

METHODS OF CALCULATING PRORATION OF COST (Section 13.04.01.02)		
Method	**Usage**	**Explanation**
Pole Count	Pole count is the normal method used for aerial facilities.	The calculation is based exclusively on the number of impacted poles located within the project limits where the Owner has the superior right, divided by the total number of impacted poles within the project limits. This calculation produces the State's share of the total relocation cost. Equal weight is normally given to each impacted pole within the project limits regardless of ancillary equipment or attachments such as guys, transformers, and switches. The impacted poles must be otherwise similar, as wood pole relocation costs are greatly different than special designed steel poles or other supporting structures. If impacted poles are of a mixed type, separate costing may be necessary for the dissimilar poles. See "Dollar Weighted" method below.
Facility Length	Measurement of the length of the impacted facilities is normally used for underground facilities, such as gas, sewer, and water, or for cables either directly buried or within conduits and for facilities on the surface, such as ditches or conduits.	The calculation to prorate liability is similar to the pole count method above and is based on the Owner's superior right length of the impacted facility lying within the project limits divided by the total impacted length within the project limits. The measured lengths must be of the same or similar size and type of facility, irrespective of ancillary equipment or features such as valves, manholes, switches, and transformers.
Dollar Weighted	This method is used where mixed facilities are to be prorated.	This approach requires considerably more effort and documentation as it is necessary to establish and support an installed replacement cost new for the existing facilities. The simple cost of the materials is not sufficient to establish this proration. The calculation is based on the installed replacement cost new of the existing facilities located within the project limits where the Owner has the superior right, divided by the total of the installed replacement cost new for all of the impacted existing facilities within the project limits. This calculation produces the State's share of the total relocation cost.

- The current project includes acquisition of access rights from adjoining properties.

- The current project right of way acquisition and roadway improvement are part of the ultimate freeway design.

NOTE: Where access rights are being acquired as part of a conventional highway, the project shall not be considered a freeway project unless the route has been designated as part of the freeway and expressway system (S&H Code Section 250 et seq.). Therefore, S&H Code Sections 703 through 707.5 are not applicable to liability determination.

13.04.02.02 Freeway Relocations

Liability for the cost of relocating facilities to provide for construction of a State freeway or expressway is determined by a combination of occupancy rights, statutes (S&H Code Sections 700 through 707.5), and applicable Master Agreements.

Extension or reconstruction of city streets or county roads done in accordance with a Freeway Agreement that provides for closure of streets or roads for freeway construction is considered part of

the freeway project for the purpose of determining liability.

Facilities installed in a road prior to a CTC resolution adopting the road as a State highway shall be considered as originally installed before the road became a State highway for application of S&H Code Sections 700 et seq. All new facilities, including additional equipment and cables installed in existing facilities, placed within the State freeway after the CTC resolution shall be relocated at the Owner's expense.

13.04.02.03 Bicycle Path Construction

S&H Code Section 156 et seq. provides that Caltrans may enter into an agreement with another agency for construction of bicycle paths or other nonmotorized transportation facilities along State highway rights of way. Caltrans' contribution, if any, toward the construction cost shall be based upon a finding that the facility will result in increased traffic safety or highway capacity. If construction of a new freeway will cause the severance or destruction of an existing nonmotorized transportation facility, Caltrans is to provide a reasonable alternative routing for the facility.

Caltrans liability for utility relocation costs is dependent on a number of factors and is determined in accordance with the rules in the table entitled Liability for Bikeways on the following page.

13.04.03.00 Master Agreements

Following enactment of the Collier-Burns Act in 1947 (which includes most of S&H Code Sections 700-711), the accumulation of disputed claims was of such magnitude as to threaten delay of the newly enacted freeway program. To meet the problem, the Legislature in 1951 enacted S&H Code Section 707.5, which authorizes the Department to enter into contracts with utility owners that supersede the provisions of the S&H Code identified in such contracts and govern exclusively the apportionment of relocation costs.

Section 707.5 has been interpreted to allow the Department to apportion liability under these agreements so as to achieve the result that would have been obtained over a period of time in the absence of such agreements. Thus, the determination of the apportionment provisions, as well as other terms, has been based on examination of past experience and evaluation of liability in the future. These Agreements, while involving compromise, reflect as nearly as the Department can predict the overall liability that would exist without them.

Master Agreements govern apportionment of the cost of rearranging facilities in connection with freeway projects in lieu of the provisions of S&H Code Section 700, et seq. In other words, under Master Agreements the provisions of the S&H Code and other laws have no application to the rearrangement of the facilities on freeway projects and are replaced by the terms of the Master Agreements. The agreements do not affect relocations on conventional highways.

13.04.03.01 Interpretation of Agreements

Utility Owner's regions, divisions, etc., and Caltrans districts have different overlapping areas, but Master Agreements are statewide. Therefore, consistent statewide interpretations are mandatory. Master Agreement liability determinations apply to all State freeway projects regardless of who funds the project or does the work, e.g., Special funded projects (see Section 13.12.02.01).

Any question or conflict concerning interpretation of any terms or scope of a Master Agreement must be submitted to Headquarters R/W for statewide resolution. Master Agreements are shown in Exhibit 13-EX-18.

No two Master Agreements are identical in terms or scope. Each Master Agreement must be read to determine the liability conditions for each Owner. Since the scope and terms of some Master Agreements have provisions that modify property rights and override portions of statutes, careful interpretation is crucial. See Exhibit 13-EX-18 for additional discussion.

LIABILITY FOR BIKEWAYS (Section 13.04.02.03)	
Situation	**Rule**
Freeway construction where there is no increase in safety or capacity of the highway due to the bikeway construction.	1. Use of State highway funds for utility relocation is not authorized when there is no increase in traffic safety or capacity. 2. If freeway construction severs or destroys an existing improved nonmotorized transportation route, Caltrans shall pay the cost of utility relocation to provide a reasonable alternate route. 3. In designing freeways Caltrans shall consider local agencies' master plans for nonmotorized transportation, but the cost of construction other than design cost is the responsibility of the local agency or others.
Freeway construction with a supportable determination of increased capacity or safety resulting from the construction of the bikeway.	1. If the nonmotorized transportation facility is designed and built within the freeway right of way and in connection with the freeway construction project, liability for utility relocation is pursuant to S&H Code Section 700 et seq. of the Master Agreements where applicable. 2. If construction of a nonmotorized transportation facility is outside the freeway right of way but within a State-owned frontage road, liability is based on common law priority of rights except when a Master Agreement is involved. In the latter situation, the Master Agreement will control. 3. For construction of a nonmotorized transportation facility in a frontage road that has been relinquished to a local agency, liability is determined the same as in Paragraph 2 above.
Conventional State highways where proposed construction of the bikeway facility will neither increase capacity or highway safety.	Liability for reimbursement of relocation must be paid from other than State highway funding.
Conventional State highways where construction of the bikeway facility will increase the safety or capacity of the highway.	Cost of facility relocation is based on common law priority of rights and may be paid from State highway funds.

13.04.03.02 Application of Agreements

Master Agreements only apply to freeway projects on highways listed as part of the California Freeway and Expressway system. See S&H Code Section 250 et seq. for a listing of applicable highway routes.

The project is not considered a freeway project unless access rights to adjoining property have been previously acquired or are being acquired as part of the immediate project. Non-freeway projects, e.g., safety projects, are treated as conventional highway projects and are not subject to Master Agreement determinations.

Master Agreements apply to utility facilities within the freeway rights of way and any other frontage or local road being reconstructed as a direct part of the freeway project. Master Agreement terms should not be applied to other ancillary highway improvement projects, such as park-and-ride lots and acquisition of replacement property sites, unless such ancillary sites are acquired as part of a freeway project.

13.04.04.00 Property Rights

The Owner may submit one or more superior right claims for a facility. Each prior right claim the Owner submits must be fully documented and supported. The documentation is referenced in, and attached to, the ROI (see Section 13.05.00.00). The types of property rights in the following sections are applicable to both conventional highways and freeways. They generally indicate how each superior right should be documented and the extent to which the Utility Coordinator should investigate the validity of the Owner's claim.

When reviewing a superior rights claim, the Utility Coordinator must determine if there is a Master Agreement with the Owner that may modifies or overrides normal occupancy rights or statutes and that may be the basis of the Owner's claim.

13.04.04.01 Fee Ownership

The State is liable for relocation costs any time the facility is on property where the Owner has fee title. The Utility Coordinator shall review title reports and right of way maps to verify Ownership.

All fee-owned property must be acquired by R/W Contract. The contract covers relocation of the facilities or provides for relocation via a Utility Agreement. The Utility Coordinator must ensure the Contract or Utility Agreement covering relocation does not set up a double payment for property rights.

13.04.04.02 Easement

In most cases when the facility is located within an easement, recorded or unrecorded, the State is liable for relocation costs. When the Owner claims a superior right pursuant to a prior easement, the Utility Coordinator must verify the location of the easement and that the easement is valid and that the Owner's rights are prior and superior to the State's.

Any Owner's relocation obligation or other limitation clauses within the easement document may be passed to the State upon acquisition of the underlying fee and must be investigated to determine if they are in conflict with the Owner's claim. State's liability for relocation costs under a valid easement extends to subsequent additions to those facilities originally installed as long as the additions are not inconsistent with the terms of the easement.

NOTE: Terms of Master Agreements may supersede liability as stated above.

13.04.04.03 Implied Secondary Easement

All city-owned facilities located in city streets and county-owned facilities located in county roads that were installed in the street or road within the city or county jurisdictional limits prior to their becoming a State highway are considered to have been installed in the Owner's implied easement reservation. All facilities so located are relocated at State expense. The Utility Coordinator should check permits, "as-built" drawings, and the Owner's records to confirm the facilities were installed prior to the date the CTC adopted the route.

The local agency may maintain or even improve their facilities as long as the improved facility remains in substantially the same location. The local agency may not, however, expand upon their existing system by installing new parallel facilities except under the usual encroachment permit requirement.

Facilities not under the city's or county's direct ownership and control, such as regional sanitation or fire districts, are not subject to the implied secondary easement liability rule.

13.04.04.04 Joint Use and Consent to Common Use Agreements

In most cases, the State will bear relocation costs for facilities installed within a JUA or CCUA area. The Utility Coordinator must determine that the JUA/CCUA existing facility is, in fact, in the area of the JUA/CCUA by comparing the facility location with the JUA/CCUA description. The document must also be reviewed for any conditions that may change or limit the Owner's rights such as:

- A JUA/CCUA based on prescriptive rights where the existing facility is different than the facility covered in the JUA/CCUA, e.g., rights for a buried 4-inch gas line but the facility to be relocated is a 16-inch gas line.

- A JUA/CCUA has an expiration date for the Owner's rights.

An Owner has the legal right to expand their facilities to the extent allowed by the terms and conditions of the easement deed. This right extends to a JUA and CCUA granted in recognition of

existing easement deeds but does not extend to prescriptive right claims. Regardless of Owner's prior rights, any expansion of Owner's facilities within the highway right of way must be in accordance with encroachment permit requirements.

13.04.04.05 Prescriptive Right

Relocation costs for facilities installed under a right of occupancy established by a prescriptive right may become the State's liability if the occupancy condition meets statutory requirements. The occupancy right must have been established by the open and notorious adverse use of another's property. Facilities must have been installed on private property with the knowledge of the property owner and without a right of way, permit, lease, or other license, and continuously maintained in the same location for the prescriptive period of at least five years. If underground facilities are involved, the original installation and continuous maintenance of the facility in the prescriptive location must be with the property owner's knowledge. Prescriptive rights cannot be established on publicly owned property. The Owner must submit a claim letter containing the above-mentioned statutory requirements (see Exhibit 13-EX-19 for an example).

The extent of the prescriptive easement is measured by the Owner's use during the preceding five years. Accordingly, the precise extent of the prescriptive easement, e.g., "a single line of poles with one crossarm and eight telephone wires," should be set out in any instrument in which the State recognizes the superiority of such rights over those of the State.

The Owner has the burden of proof in establishing a valid claim to a prescriptive right. The factual situation where prescriptive rights are claimed shall be carefully investigated. The possibility of entry and occupancy under lease, permit, license, or other permissive use should be explored.

The determination of liability under Prescriptive Right requires the completion of Form RW 13-18.

13.04.04.06 Lease

A lease is similar to an easement; however, it is restricted to a specific time period written into the lease. The Utility Coordinator should investigate the validity of the lease in the same manner as for easements, e.g., the ownership and description.

13.04.04.07 License

A license is permission from a property owner for another person to use land. A license differs from an easement or a lease in that it is only between the two parties and cannot be transferred unless it is specifically written into the license. Normally, when an Owner has a license and the State acquires the property on which the facility exists, the license is no longer valid and the State can require the Owner to relocate at their own expense.

The Utility Coordinator must read the license to determine if the above requirements, such as successors or assigns, are mentioned in the license.

When evaluating a license, the Utility Coordinator must take into account the level of title the State has already acquired at the time of issuance of the Notice to Owner because only the fee owner of property can enforce conditions reserved in the license.

NOTE: When the Owner has placed substantial improvements within the license area, a review by Legal is necessary before determining liability.

13.04.04.08 Franchise

Utility facilities that are placed in public rights of way pursuant to a franchise from a city or county, or pursuant to a statewide legislative franchise, are under the long-established common law principle to relocate at their own expense whenever requested to do so for a legitimate government purpose by State or local authorities. However, circumstances of each utility relocation, with respect to provisions of the specific franchise involved, must be carefully reviewed. See also Section 13.04.05.02.

13.04.04.09 Encroachment Permit

An Encroachment Permit is a form of license that provides permission to the Owner to install a facility but does not convey any property rights. The permit also imposes certain restrictions on the Owner. As does a franchise, the permit contains a relocation clause that states the Owner must relocate their facilities upon request at the Owner's own expense. See also Section 13.04.05.01.

13.04.04.10 Joint-Pole Agreement

The California PUC has authorized the joint sharing of poles by different utility facilities as a means of providing more cost-effective service and to reduce "utility pole blight." The agreement to share generally conveys rights to the joint pole user that are equivalent to those the original owner of the pole enjoyed. The pole Owner's rights must be reviewed, therefore, to determine joint-use Owner's rights.

On joint pole facilities, when multiple Owners are found to be sharing the pole, whether or not such use is covered by the California Joint Pole Association, each Owner must submit their claim of liability for the property occupied. The facility that shares the pole with the pole Owner may have a valid property right claim even though they occupy the pole under a lease, license, or permit with the pole Owner. (See Section 13.04.04.10).

13.04.05.00 Streets and Highways Code

The provisions of S&H Code Sections 673 and 680 authorize the State to issue a written notice to the Owner to remove, relocate, positively locate, etc., facilities installed under permit at the Owner's expense (see Section 13.04.04.09).

Sections 700 through 711 pertain only to utility facilities in access-controlled freeways or expressways. Where the Owner has a valid superior right and is also entitled to reimbursement under one of the 700 series of the Code, the basis for the State's liability must be the superior right (unless modified by a Master Agreement). This allows the State to perpetuate the Owner's superior right within the freeway right of way.
Liability for the cost of relocating facilities to provide for improvement of State freeways is based on who has the superior occupancy right in the same manner as previously discussed for conventional highways. S&H Code Sections 702 through 707.5 modify this basis for freeway projects; therefore, these Code sections must be carefully reviewed and applied.

NOTE: "Lawfully maintained" as used in the Code: A utility facility that has a legal basis right to be in its present location and, therefore, is not in trespass. An Encroachment Permit satisfies the requirement of "lawfully maintained."

13.04.05.01 Section 673 - Relocation or Removal of Encroachment

This section applies to publicly owned facilities, such as counties, cities, public corporations, or political subdivisions (governmental agencies), where the governmental agency has been issued an Encroachment Permit by Caltrans to install facilities within a conventional highway. When the facility requires relocation for improvement of the highway, the governmental agency must relocate at their own expense. See also Section 13.04.04.09.

13.04.05.02 Section 680 - Franchises in State Highways; Temporary Relocations

This section applies only to Owners who have installed their facilities within a conventional highway by a franchise agreement (franchise) with a governmental agency prior to the highway becoming a State highway. When the facility requires relocation for a highway improvement, Caltrans can enforce provisions of the franchise and require the facility to be relocated at Owner's expense. An Owner may occasionally claim relocation is at State's expense pursuant to revisions of their franchise. In these situations the Utility Coordinator must review the franchise to ensure the provisions apply. See also Section 13.04.04.08.

Relocation for temporary purposes has historically been interpreted to mean a utility relocation that results from a temporary move of the highway (a detour). Thus any utility adjustment resulting from a temporary highway move is at State's expense.
Utility relocations necessary to permit the safe construction of the highway project, such as utility "shooflies," are not considered to be temporary purposes under the law. In this situation the Owner has the option to temporarily relocate to clear construction or to permanently relocate to another location rather than to go back to their original location. In this situation, the Notice must not refer to a temporary relocation as it is entirely the

Owner's option as to whether they wish to return to the original location.

Temporary relocations that are requested by the highway contractor as a means of convenience for construction shall be the highway contractor's responsibility. The Project or Resident Engineer, as appropriate, shall determine construction necessity versus. convenience.

13.04.05.03 Section 702 - Relocation Outside Freeway

This section applies in situations where the Owner is required to remove and relocate their existing lawfully maintained facility to a location entirely outside the freeway right of way. The State must pay the reasonable and necessary cost of such removal, relocation, and reinstallation into the new location.

This section does not apply to relocation of the facility from one location within the freeway to another location within the freeway, nor does it apply to relocations into a service road or outer highway because these are considered part of the freeway.

Essentially, this section only applies if a utility easement is required to accomplish the relocation of the Owner's facilities entirely outside the State's or other public road right of way.

13.04.05.04 Section 703 - Relocation Within Freeway

This section applies to situations where the State requires the Owner to relocate their existing facilities from one location within a freeway right of way to another location within the freeway right of way. Several different types of facilities are covered as shown in the table entitled S&H Code 703 - Types of Facilities on the following page.

13.04.05.05 Section 704 - Subsequent Relocation

If the State requires an Owner to relocate any of their facilities within the freeway right of way more than once within a period of ten years, the State shall pay the cost of the second relocation and any subsequent relocation within the ten-year period. The ten-year period is interpreted as the date between completion of the original relocation to the beginning of construction on the subsequent relocation. Each time a new relocation is accomplished, the ten-year period starts anew.

13.04.05.06 Section 705 - Allowable Credit on Relocation

In any case in which the State is required under the provisions of this law to pay the cost of removing or relocating any facility, the State shall be entitled to credits as shown in the table entitled Allowable Credits on the following pages.

13.04.05.07 Section 707.5 - Contracts With Utilities Master Agreements

Statutes provide that the State and any Owner, as defined in S&H Code Section 700, may enter into a contract providing for how each party will bear the costs for affected utility facilities. All Master Agreements are shown in Exhibit 13-EX-18. (See Section 13.04.03.00 and 13-EX-18 for further discussion on Master Agreements/ Contracts.)

13.04.06.00 Water Codes

Water Code Sections 7034 and 7035 have been enacted to cover liability for existing bridges and water conduits lying within the existing right of way for crossings of either freeways or conventional highways. Conduits include canals, ditches, culverts, pipelines, flumes, or other facilities for conducting water.

If a conduit is relocated or replaced pursuant to Sections 7034 and 7035, the State will not take credit for depreciation but will be entitled to credits for betterments and salvage. The State shall only be responsible for replacement in kind, e.g., same size and type.

S&H CODE 703 - TYPES OF FACILITIES (Section 13.04.05.04)	
Type	**Requirements**
Publicly owned utility facilities other than sewers, fire hydrants, and street lights	Whenever relocation of such facilities is required, the State shall pay the cost of relocation, provided the facility was lawfully maintained and originally installed in its existing location prior to the public highway becoming part of a State highway. **NOTE:** An important critical control date for determining liability is the date the CTC adopts a State highway alignment that includes the local street and road within its boundaries. Such local street and road shall be considered a part of the State freeway from then forward.
Privately owned water facilities	Whenever relocation of such facilities used solely to supply water is required, the State shall pay the cost of relocation, provided the water facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming a State highway.
Privately owned facilities other than water	Whenever relocation of such facilities is required, the State must pay the cost of relocation provided that: 1. The facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming part of a State highway. 2. The facility, as established by the Owner, is not under an express contractual obligation to relocate at the Owner's expense. **NOTE:** The term "express contractual obligation" means a written obligation. Franchises dated after 1937 were generally written to comply with the State Franchise Act, which does spell out the obligation in writing.
Sewers, fire hydrants, and street lights	Publicly owned sewers, publicly or privately owned fire hydrants, and publicly or privately owned street lighting structures that are required to relocate shall be relocated at State expense, regardless of whether or not the facility was lawfully maintained or originally installed in its existing location prior to the local street or road becoming part of a State highway.

Application of Sections 7034 and 7035 is not to be considered where the conduit is located longitudinally in the highway. Where the facts of a situation fall within both sections, Section 7034 will be applied. Sections 7034 and 7035 are not to be used if the Owner of the facility has some form of property right, such as fee title or easement.

The determination of liability under the Water Code requires the completion of Form RW 13-19.

13.04.06.01 Section 7034

Section 7034 provides that the bridge or conduit will become the sole responsibility of the county (or the State where the county road has subsequently become a State highway) where it has been or will be placed across county roads, if:

- The facility has been constructed in a permanent manner and constructed or brought up to county standards.
- The facility has been accepted either formally or informally by the county.

Acceptance is defined as:

- **Formal acceptance -** Formal acceptance means the County Board of Supervisors has taken appropriate action, usually in the form of a motion or resolution.
- **Informal acceptance -** While the meaning of informal acceptance (action) is not free from doubt, evidence of the act or acts by the county exercising jurisdiction over the conduit

ALLOWABLE CREDITS (Section 13.04.05.06)	
Type	**Explanation**
Betterment Credit	The State should only pay for a functional equivalent replacement of the impacted utility facility. Any increase in the size or capacity of the facility that is for the Owner's benefit is considered the Owner's betterment. The State shall receive a credit for the difference between the cost of the functional replacement of the original facility and the cost of the facility as constructed. There are, however, exceptions to the general rule. All betterments that result in increased capacity or more desirable placement, such as undergrounding, that the Owner may claim to be at State's expense must be carefully reviewed. The following types of betterment may be accepted as part of the State's liability: 1. Required by the highway project. 2. Replacement devices or materials that are of equivalent standards although not identical. 3. Replacement of devices or materials no longer regularly manufactured with next higher grade or size. 4. Required by State or Federal law or regulation. 5. Required by current design practices regularly followed by the Owner in their own work, if there is a direct benefit to the highway project. The Utility Coordinator is responsible to determine the overall scope of the betterment, and Audits is responsible to verify accuracy of the Owner's calculation. Usually betterment issues must be discussed with Headquarters R/W before final resolution. Betterment is normally measured by an increase in size or capacity such as a larger pipe, a greater number of telephone circuits, additional conduits, or a higher capacity power line. A betterment credit is not limited to the cost of materials but must include all increased costs of engineering and installing the betterment facilities. Examples of some extra costs may be additional engineering, special construction methods, and increased overhead.
Salvage Credit	When relocation is required, the State shall be given credit for the value of any materials from the old facility that the Owner retains and removes from the construction project. Generally, such material is either reconditioned and returned to stock or sold as scrap. Under PUC accounting regulations, utility owners shall provide a credit based on the original cost. The State is entitled to a credit for each item of material returned to stock at its current inventory price less depreciation and less cost of reconditioning. The State is also entitled to a credit in the amount of the sales price or, if not sold at the time of billing, the estimated value for materials sold or to be sold as scrap or junk. The Owner must be made aware that the State will not participate in the cost of removing a facility where the cost is greater than its salvage value unless it has to be removed for safety or aesthetic reasons. Old facilities containing hazardous material shall be removed at the Owner's expense.
Depreciation Credit	The State shall receive credit for accrued depreciation on the old facilities whenever the relocation of a facility is required on either conventional or freeway projects. Where there are no replacement facilities, such as for abandoned facilities, credit for depreciation shall not be taken. Depreciation credit is an allowance for the value of expired service life. The credit given shall be based on straight line depreciation computed on original installed cost, expired life, and estimated total life as reflected in the Owner's books. Following are special conditions for handling specific depreciation credits for publicly owned sewers and private oil company facilities: 1. Publicly owned sewers - Credit for depreciation on relocations of publicly owned sewers is not

ALLOWABLE CREDITS (Section 13.04.05.06)	
Type	**Explanation**
	allowed. 2. Private oil companies - The State is to receive a credit for depreciation on non-common carrier (non-public utility) longitudinal facilities owned by oil companies. The state has historically calculated depreciation credit on the following basis: • Straight-line depreciation. Total life used is 40 years. • Credit is not to exceed 70 percent of the original installation cost. • When no depreciation is claimed, the Owner must supply proof of the remaining service life of the remaining facility and a written certificate from the Owner's comptroller or chief accountant stating that no part of the replacement facility will be capitalized or depreciated.

or bridge and indicating an intent on the part of the county to take over the facility, such as periodic acts of maintenance or substantial repairs or replacement, represent informal acceptance of the facility.

If both of the above requirements are fulfilled, the bridge or conduit becomes the sole responsibility of the county or the State if the county road has subsequently become a State highway. The State is obligated to maintain, repair, improve for the benefit of the county or the State, reconstruct, or replace such bridge or conduit.

In a relocation under Section 7034, a JUA or CCUA should not be issued to the Owner as this implies the Owner had prior rights. If the Owner insists on some form of agreement showing their right to be in the new location, an agreement similar to a JUA/CCUA but not containing any language relating to prior rights may be used. This would acknowledge that the Owner would have the same rights in the new location as in the old. Any such agreement shall have Headquarters R/W prior approval.

13.04.06.02 Section 7035

The effect of Section 7035 is to establish responsibility for relocation costs when a conduit (but not a bridge) existed without evidence of prior rights and the State's records of its right of way do not establish a superior right. Section 7035, where applicable, establishes a conclusive presumption of prior rights in the conduit Owner. Use Section 7035 only if some other form of prior rights cannot be established. This law also requires the replaced or reconstructed conduit resulting from a State-initiated project to become the State's responsibility for future maintenance similar to that required by Section 7034.

This statute requires that a conduit (but not a bridge) for conducting water across the highway shall be repaired, relocated, and replaced at the expense of the agency having jurisdiction over the highway. In no event is the State to accept responsibility for maintenance of the conduit, such as cleaning out dirt or silt. The issuance of a JUA or CCUA is appropriate in a relocation under this statute.

Special clauses in the JUA/CCUA may be appropriate (see Sections 13.07.03.05 and 13.11.05.01).

13.04.07.00 Special Liability Issues

There are numerous types of miscellaneous costs for which the Owner may or may not be reimbursed that do not directly relate to a single authorizing statute. Liability for reimbursement of such costs is determined by previous legal interpretation or judicial ruling of existing utility relocation law and from non-utility related statutes. Unique costs must be cleared with Headquarters R/W before an agreement requiring State reimbursement is entered into.

13.04.07.01 Interest During Construction

Federal utility regulations permit utility Owners to be reimbursed for interest on funds used during construction as a cost of construction. The California PUC has accepted these regulations as being applicable to regulated utilities and thus

applicable to State-ordered relocation work. Final reimbursement of interest charges is conditioned on Audit approval. In general, interest is allowed only where unreimbursed completed work is substantial and the Owner is using progress billing to minimize outstanding reimbursable costs.

13.04.07.02 Clearance of Highway Adjunct Properties

On occasion the State acquires separate properties for the purpose of fulfilling a highway construction or operational need, such as roadside rests, park-and-ride lots, weigh stations, and mitigation parcels. Relocation of utility facilities on these properties follows the same laws and rules applicable to the highway project for which these adjunct sites were acquired. This means that a park-and-ride lot in support of a freeway follows laws and rules applicable to freeways. See Section 13.04.03.02 Master Agreement Applications.

13.04.07.03 Extraordinary Relocation Costs

The State normally pays its pro rata share of all reasonable and necessary utility construction costs. The State generally does not accept total responsibility for a unique item of cost merely on the basis that the Owner would not have incurred the extra cost except for the State-ordered relocation. Some of the more frequent examples are discussed below. Other less frequently occurring examples may be found in the Utility Reference File.

- **Clearing and grubbing of new right of ways -** Where possible, utility relocations are coordinated with the highway construction project so the utility relocation construction may take place after the highway contractor has cleared the new right of way. If this delayed relocation is not feasible, the utility work may have to proceed in advance. The State is not liable for the additional cost beyond its usual pro rata share.

- **Owner's overtime costs -** If the State fails to provide for a reasonable time frame for the Owner to complete necessary relocation activities without incurring contractor delay costs, the Utility Coordinator may authorize payment of labor overtime. The authorization should be made a part of the Notice and clearly state the necessity for such extraordinary costs.

- **Wasted work -** Sometimes as a result of a change in design or construction change order, completed relocation work has to be redone. The State is liable for all such wasted relocation work regardless of the initial liability proration (see Section 13.09.04.00).

- **Hazardous waste costs -** Should the utility Owner incur extra costs due to the removal or disposal of hazardous spoils, the state at a minimum pays its pro rata share of the extra costs. If hazardous wastes are encountered within the project limits, the spoils and associated handling costs are dealt with in the same manner and liability as project construction hazardous waste costs. The extra cost incurred for hazardous waste found outside the project right of way, such as on local streets beyond project construction, are reimbursed in accordance with the State's pro rata liability in the same manner as for any other type of extraordinary construction costs associated with utility relocations. (See Section 13.01.02.05.)

13.04.07.04 Delayed or Canceled Projects

Owners are required by law to relocate their facilities in compliance with an issued Notice. If such a required relocation is completed in part or totally at the Owner's expense, and the project is subsequently canceled by the CTC's official action, the Owner shall be entitled to reimbursement of their wasted work costs. If the project is merely delayed, even for what appears to be an indefinite period of time, reimbursement is not required so long as the project remains on the State's program for future construction. Headquarters R/W prior approval shall be obtained before obligating the State to any reimbursement of this type.

13.04.07.05 Future Maintenance of Water Conduits

The State shall not accept liability to maintain the interior of a water conduit, such as silt removal, on the basis of a claim that the conversion or extension of an existing open ditch to a conduit has increased the Owner's operating costs. Even though the State may have placed the conduit and is thus becoming the owner of it, the water provider shall be responsible for all maintenance associated with the product conveyance.

On the basis of a factual, nonspeculative showing that there are additional real costs arising out of the State-caused relocation, the State may be liable for some of the additional new costs. Compensation must be based on the present worth of the future labor and equipment costs that are shown to substantially exceed current maintenance costs for open ditch maintenance. This same premise may be applied to other similar situations that may cause increased costs associated with a major change to an existing facility, such as the addition of a sewer lift pump.

13.04.07.06 Loss of Plant, Investment, or Business

The State is required by law to physically replace the utility facility in the same functionally equivalent state of operation in the after condition as it was before. Relocation costs, therefore, do not include the cost of abandoned property, loss of income resulting from loss of customers, loss of revenue due to temporary shutdowns, or for any other form of consequential damages.

13.04.07.07 Undergrounding

When a project conflict exists and the State must relocate an existing aerial utility facility, the State cannot pay any portion of the undergrounding costs unless the undergrounding is based on an engineering need for the State's project or is the most cost effective. Undergrounding requirements as established by local government for aesthetic purposes are not binding upon the State. The State is only obligated to pay for replacement of the functional utility that previously existed.

13.04.07.08 Abandonment or Removal Costs

Costs for removal or abandonment of existing utility facilities are reimbursable provided the removal or abandonment is necessitated by the highway project, required for aesthetic or safety reasons, or contains hazardous material that cannot safely remain. In most cases it may be feasible to abandon the existing utility facilities in place if the existing facilities will not conflict with the proposed highway project. Underground facilities containing hazardous material, e.g., asbestos and lead, should remain where possible. If required to be removed, the State will reimburse Owner for normal pro rata costs for removal effort only.

In cases where there is no need to remove the existing utility facilities but the Owner elects to proceed with the removal, the State shall not pay any removal costs above the salvage value of recovered materials credited to the project.

NOTE: Due to safety problems that may arise during the vacancy or demolition/removal of an improvement with a gas meter, the Owner is usually instructed to remove the meter when the improvement is to remain vacant. The removal date must be coordinated with R/W Property Management. The State will reimburse the Owner for removal costs based on liability of the gas distribution line located in the adjoining street.

Meter removal costs are paid without credit for salvage value. Under federal reimbursement requirements, these costs must be coded as demolition costs for the project (see Section 13.14.03.02).

13.04.07.09 Additional Spare Ducts for Replacement Telephone Facilities

A long-term understanding with telephone Owners provides that the State will reimburse additional duct costs for State-ordered conversion of aerial facilities to underground. This was based on the premise that typical aerial installation was constructed to provide for a minimum capability to install four cables even if fewer were initially installed. Therefore, whenever non-fiber-optic aerial facilities are ordered to be converted to a like-form underground installation, the following table is used as a basis for allowed State reimbursement.

Number of Existing Cables	Number of Replacement Ducts
1	4
2	4
3	4
4	6
5	7
6	8
7	9
8	10

If the existing facilities to be placed underground are fiber optic, the State will only reimburse for duct installations on the basis of the number of ducts needed to replace the existing telephone capability plus one spare duct.

NOTE: FHWA will only reimburse on the basis of providing one spare duct regardless of the type of existing facility.

13.04.07.10 Disruption of Service Facilities

Service facilities that are located on the property being served are usually there by permission of the property owner as a requirement for receiving utility service. The State in acquiring the property being served may, as the new property owner, revoke the owner's permission for occupancy and thus require the service facilities to be removed or abandoned.

If some portion of the impacted property remains in private ownership with a continuing need for utility service or provides current service to other remaining properties, the State is liable for whatever facility adjustments may be necessary. Other than removal of portions of the severed facilities for safety reasons, which is handled by Notice and Agreement, all other utility adjustment costs are treated as cost-to-cure damages in the acquisition of the impacted parcel.

13.04.07.11 CURE Project Relocations

See Section 13.03.04.02.

13.04.07.12 Relocation for Non-Highway Use

California case law supports the premise that a utility facility under a franchise must be relocated at the Owner's expense when required by any proper governmental purpose. Required relocations for construction of maintenance stations, highway drainage, truck inspection facilities, accommodation of other relocated utility facilities, functional replacement acquisition sites, etc., are covered under "proper governmental purpose."

13.04.08.00 Liability Undetermined

Liability must be determined prior to issuance of a Notice to Owner. This cannot always be accomplished, however, as sometimes the Owner is unable to provide timely documentation that will allow the State to verify the information necessary to determine liability in a reasonable time. In these cases and when time is of the essence, a Notice can be issued without liability being determined to ensure project delivery. Except for positive locations, as provided for in Section 13.06.03.04, prior Headquarters R/W approval is required when issuing this type of Notice.

Liability undetermined is not to be used simply because the staff work necessary to determine liability for a relocation has not been done. The request for liability undetermined should contain everything that is normally provided for a liability approval with the exception of the proration of liability.

The Owner must agree to accept the Notice with liability undetermined and perform the relocation. Preferably this agreement should be in writing. If the Owner does not provide a firm (enforceable) commitment, the certification and project could be in jeopardy. A copy of the Owner's letter or other documentation regarding acceptance of liability undetermined should be included in the transmittal to Headquarters R/W.

There are two liability statements that can be used in the Notice when a liability undetermined relocation is to be initiated. They are:

- Liability is per Master Agreement dated _____.
- Liability is undetermined.

13.04.08.01 Request for Approval of Liability Undetermined

The request for Headquarters R/W approval of a liability undetermined transaction must be in writing and must contain all of the elements required by Section 13.05.01.00, fully complete and detailed with supporting documentation, as usually found in a request for approval of a Report of Investigation and FHWA Authorization. The difference is that the Report of Investigation cites and supports the reasons for the request for liability undetermined.

A pre-award audit may be necessary before approval can be made where the transaction involves work by Owner's contractor or involves an Owner with whom the State has not recently done business.

Upon approval, a Conceptual FHWA Specific Authorization with liability undetermined is issued authorizing the district to issue only the Notice to Relocate. The Utility Agreement cannot be sent to the Owner until the final Report of Investigation detailing the liability is approved and a full FHWA Specific Authorization is issued.

In all instances where a Notice to Owner has been issued under liability undetermined, the Utility Coordinator shall expeditiously settle liability determination with the Owner. The final Report of Investigation package, including the Owner's Claim Letter and the Utility Agreement, should normally be submitted within 30 days unless Headquarters R/W approves an extension.

13.04.08.02 Liability Per Master Agreement

On Freeway projects where there is a Master Agreement between the Owner and the State and liability is undetermined or in dispute, the liability statement on the Notice to Owner should state "Liability is pursuant to the Master Agreement dated _____."

The above liability statement is used in lieu of "Liability is undetermined" or "Liability is in dispute" as liability for Owners with Master Agreements is always based on one or more sections of the Agreement.

13.04.09.00 Liability in Dispute

Unlike right of way acquisition, there is no administrative settlement process to resolve disputes in utility relocations. The reason for this is that utility liability issues are largely based on a factual determination of what is required to produce a functional replacement for the impacted utility facility and who has the superior position of a prior right. This is not to say that differences in the determination of the facts or their interpretation do not exist.

The preferred method of resolution obviously is to mutually agree on how to handle a particular situation and what the resultant liability should be. As the Owner's areas of operation may encompass other districts or the situation may reoccur with another Owner, the problem cannot be negotiated away, but rather a statewide resolution of the problem is essential. This may require that Legal, as well as Headquarters R/W, work with the district toward its resolution. Failing a resolution based on a mutually acceptable solution, the alternatives are to litigate a resolution or to compromise the particular dispute.

Litigation is normally used where a large cost is involved or a significant legal premise is at stake. The decision to proceed to litigation depends heavily on Legal's input as well as Right of Way functional needs.

A compromise settlement should only be used for a low-cost situation or a very specialized issue that, in the district's opinion with Headquarters R/W concurrence, is not apt to reoccur or set a bad precedent. The Utility Coordinator, with the concurrence of the DDC-R/W, develops a proposed settlement and sends it to Headquarters R/W for approval and concurrence by Legal as appropriate.

13.04.09.01 Agreement to Disagree

The resolution of the dispute may be too time consuming to be accomplished and still meet project dates. The Utility Coordinator should attempt an "agree-to-disagree" understanding with Owner. With the Owner's concurrence, the

Notice may be issued using "liability in dispute" as the liability statement in the Notice. If the Owner does not concur with the issuance of a Notice on this basis, the provision of S&H Code 706 must be effected. This requires an advance deposit to cover the cost of the work in dispute, and, when so advanced, the Owner is obligated to complete the utility relocation as ordered. State's deposit shall not include the cost of any Owner-initiated betterments. A special agreement is required (see Exhibit 13-EX-17) to cover the advanced funds, deposit to a separate interest-bearing account, etc.

13.04.10.00 Processing Liability Approval

Once liability is approved, either by Headquarters R/W or the authorized district representative, the Utility Coordinator prepares a cover letter to the Owner transmitting the Notice to Owner, Encroachment Permit and Utility Agreement (if required). See Exhibit 13-EX-13 for elements of the transmittal letter.

NOTES: